

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GENEVA G. BRABHAM,

Plaintiff,

vs.

**6:15-CV-79
(MAD/TWD)**

**ST. LUKES HOME RESIDENTIAL; LISA VOLK,
Executive Director; KATHRYN MOLINARE, Social
Work Intern; CHIEF CHRISTOPHER KILMARTIN,
Security, St. Lukes Home; OFFICER GATENO,
Security, St. Lukes Home; INVESTIGATOR SICA,
New Hartford Police Department; and GENE
ORCOTT, Nurse Supervisor,**

Defendants.

APPEARANCES:

OF COUNSEL:

GENEVA G. BRABHAM

P.O. Box 8362
Utica, New York 13505
Plaintiff *pro se*

Mae A. D'Agostino, U.S. District Judge:

ORDER

In a complaint dated January 21, 2015, Plaintiff alleges that she was discriminated against because of her race or color in violation of Title VII of the Civil Rights Act of 1964. *See* Dkt. No.

1. In an April 28, 2015 Report-Recommendation and Order, Magistrate Judge Dancks granted Plaintiff's application for leave to proceed *in forma pauperis* and reviewed the sufficiency of the complaint. *See* Dkt. No. 4. Magistrate Judge Dancks found that the claims against the individual Defendants should be dismissed with prejudice because individuals are not subject to liability under Title VII. *See id.* at 4-5. As to Defendant St. Luke's Home, Magistrate Judge Dancks recommended that the Court dismiss the complaint without prejudice because Plaintiff has failed

to allege facts plausibly suggesting her membership in a protected class or that the alleged adverse employment action occurred under circumstances giving rise to an inference of discriminatory intent. *See id.* at 5-6. On May 14, 2015, Plaintiff filed objections to Magistrate Judge Dancks' Report-Recommendation and Order. *See* Dkt. No. 5.

When a party files specific objections to a magistrate judge's report-recommendation, the district court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). However when a party files "[g]eneral or conclusory objections or objections which merely recite the same arguments [that he presented] to the magistrate judge," the court reviews those recommendations for clear error. *O'Diah v. Mawhir*, No. 9:08-CV-322, 2011 WL 933846, *1 (N.D.N.Y. Mar. 16, 2011) (citations and footnote omitted). After the appropriate review, "the court may accept, reject, or modify, in whole or in part, the findings or recommendation made by the magistrate judge." 28 U.S.C. § 636(b)(1).

Plaintiff's objections merely state that the complaint is factually sufficient and that it makes out a prima facie case of discrimination. *See* Dkt. No. 5 at 1. After fully reviewing Magistrate Judge Dancks' analysis of the claims, the Court finds no clear error in her findings and accepts the Report-Recommendation in its entirety. As Magistrate Judge Dancks correctly found, individuals are not subject to liability under Title VII. As such, the claims against the individual Defendants are dismissed with prejudice because any amendment would be futile. As to the claim against Defendant St. Luke's Home residential, the Report-Recommendation correctly found that Plaintiff has failed to allege facts plausibly suggesting her membership in a protected class or that the alleged adverse employment action occurred under circumstances giving rise to an inference of discriminatory intent. The complaint fails to specify Plaintiff's race or color, the

race or color of the other employee who was allegedly treated differently, or any other facts plausibly suggesting discrimination on the basis of race. Since amendment of this claim may not be futile, the claim is dismissed with leave to amend.

Accordingly, the Court hereby

ORDERS that Magistrate Judge Dancks' Order and Report-Recommendation is **ADOPTED** in its entirety for the reasons set forth therein; and the Court further
ORDERS that the claims against Defendants Volk, Molinare, Kilmartin, Gateno, Sica, and Orcutt are **DISMISSED without leave to amend**; and the Court further
ORDERS that the claim against Defendant St. Luke's Home Residential is **DISMISSED with leave to amend**; and the Court further

ORDERS that, if Plaintiff wishes to proceed with a Title VII claim against St. Luke's Home Residential, she shall file an amended complaint within **thirty (30) days** of the filing date of this Order; and the Court further

ORDERS that, if Plaintiff fails to file an amended complaint within **thirty (30) days** of this Order, the Clerk of the Court shall enter judgment in Defendants' favor and close this case, without further order of this Court; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order, along with Magistrate Judge Dancks' Order and Report-Recommendation, in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: July 29, 2015
Albany, New York



Mae A. D'Agostino
U.S. District Judge